

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Altice USA, Inc.)	MB Docket No. 18- 9
Cablevision Systems Corporation, and)	
CSC Holdings, LLC)	
)	
Emergency Petition for Injunctive)	
Relief)	

RESPONSE TO OPPOSITION OF ALTICE USA, INC.

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Starz Entertainment, LLC (“Starz”) hereby responds to the Opposition of Altice USA, Inc. to the Emergency Petition of Starz Entertainment, LLC for Injunctive Relief.¹

I. INTRODUCTION

Cablevision Systems Corporation (“Cablevision”) and its parent company Altice USA, Inc. (individually, and together with Cablevision, “Altice”) clearly violated Sections 76.1603(b) and (c), and 76.309(c)(1) of the Commission’s rules when, on January 1, 2018, without the required prior customer notice, they deleted 16 STARZ, STARZENCORE, and MOVIEPLEX channels (the “Starz Channels”) from all of Cablevision’s cable systems and subsequently avoided customer calls inquiring or complaining about the deletion. In so doing, Altice caused, and continues to cause, its customers and Starz serious irreparable injury that, despite Starz’s efforts to mitigate,

¹ See Opposition of Altice USA, Inc. to Emergency Petition of Starz Entertainment, LLC for Injunctive Relief, MB Docket No. 18-9 (Jan. 22, 2018) (“Altice Opposition”); Emergency Petition of Starz Entertainment, LLC for Injunctive Relief, MB Docket No. 18-9 (Jan. 17, 2018) (“Starz Emergency Petition”).

now requires the Commission's immediate injunctive relief. In its Opposition, Altice fails to rebut the fundamental facts that it did not provide consumers with the prior notice required by law and then failed to respond in any reasonable way to the thousands of customer inquiries and complaints that it received.

II. SUMMARY

The Emergency Petition seeks immediate FCC action to require Altice to comply with basic cable consumer protection requirements. These requirements mandate thirty days' advance notice to customers and local franchising authorities before any programming or service changes, and compliance with minimum customer service requirements in the event of a change. The Altice Opposition concedes that the company violated these rules by admitting that advance notice was given only minutes before deleting the Starz Channels and acknowledging that subscribers have encountered delays and disconnects in reaching their representatives. The clear failure of Altice to meet its consumer protection obligations under the rules is further evidenced by the thousands of customer complaints submitted into the record. Accordingly, there can be no serious question that Altice violated the Commission's rules and that prompt Commission action is needed to enforce them.

Altice attempts to explain away its failure to comply with Commission rules by suggesting that: in its view, prior notice is "obsolete" and no longer important; providing prior notice is merely an "abstract principle" rather than a requirement; the obligation, in fact, was on Starz to accept any deal Altice offered by December 1 in order to ensure Altice's ability to comply with the FCC rules; and the burden was on Starz to instruct Altice about its obligations under the FCC notice rules. None of these explanations is consistent with the facts or the purposes of the rules. As detailed in prior filings and

supplemented below, Starz was – and remains – willing to provide its service under the same terms and conditions to allow for the required thirty-day customer notice and Starz has not de-authorized Altice from receiving its programming signals to this day. Altice, within its clear control, decided to flash cut Starz’s popular programming and ignore the Commission’s rules requiring advance notice to customers.

Altice attempts to obfuscate these basic facts by falsely claiming that Starz is asking the Commission to insert itself in a commercial dispute. That is not the case. Starz is simply requesting that the Commission enforce its consumer protection requirements by requiring Altice to do what it should have done from the outset – comply with the Commission’s straightforward rules of which it was clearly aware. After compliance, Altice can decide to carry or not carry the Starz Channels.

Altice also contends there is no emergency or need for prompt agency action. Starz recognized the harmful impacts of Altice’s deletion immediately, and moved swiftly to call for Commission action and provide assistance to confused and angry customers. However, in large part due to Altice’s avoidance of customer concerns and campaign of misinformation that followed Starz’ initial petition filing, Starz saw the harms created by Altice rapidly compounded to the point at which seeking emergency relief became imperative. The facts show that consumer confusion and complaints have been escalating and not abating. At last count, Starz is aware of nearly 60,000 customer complaints. The purpose of the Emergency Petition is to stop this confusion, give consumers an opportunity to communicate their views on the deletion of 16 channels from the packages they have purchased, and let those consumers make the informed choices contemplated by and protected through the FCC rules at issue. The customer

confusion and anger resulting from Altice's unlawful actions are precisely why the Commission adopted the rules in the first place and compel expedited action.

Finally, given the clear rule violations, there can be little question that the record shows a high likelihood of success on the merits. The huge volume of customer complaints shows that consumer harm is occurring and Starz, for its part, is cut off from the top market in the country during a critical service month in which it is launching a highly anticipated new show. Altice, on the other hand, offers unsupported claims of inconvenience that would arise from being required to comply with the rules. If the Commission were to accept these explanations, cable operators could easily evade their consumer protection obligations to correct their own rule violations through self-created costs and disruptions. The public interest calls for prompt Commission action to give Altice customers the opportunity and information to make informed decisions in the face of losing programming services that they continue to pay to receive.

Therefore, the Commission should find that, when considered as a whole under the weight of the public interest, the requirements for injunctive relief have unquestionably been met and exceeded.

III. FACTUAL BACKGROUND

In its Opposition, Altice presents a narrative version of the negotiations and events preceding its unlawful deletion of the Starz Channels that is as distorted as it is irrelevant. The inescapable fact is that Altice removed Starz programming from its systems without complying with the Commission's consumer protection requirements. Critically, in its Opposition, Altice does not challenge the following key facts:

- On December 20th and December 23rd, Starz made good-faith offers to continue offering the Starz Channels, under the then-existing terms and conditions, while negotiations continued. These extensions would have

allowed Altice to make the required thirty-day notice to consumers. Altice rejected Starz's December 20th offer and, on December 23rd, and insisted that it would agree to an extension only if the channels were provided for free.²

- At midnight on January 1, 2018, all Cablevision systems spanning numerous franchise areas deleted all Starz Channels that they distributed without the required thirty-day notice to subscribers required by sections 76.1603(b) and (c).
- Starz did not, and has not, de-authorized Altice from receiving Starz's satellite-delivered signals.³ Altice could transmit the Starz Channels to its subscribers today. Starz subscribers do not receive the Starz Channels because Altice has deleted them from its systems.
- Tens of thousands of Cablevision subscribers have complained about the deletion of the Starz Channels and Altice's avoidance tactics and false and misleading statements.⁴

Furthermore, Altice tries to argue that it had no legal right to continue to carry the channels past the expiration of the agreement so it could not put up the channels past December 31st. This is only true because Altice rejected Starz' offer to extend the agreement on the same terms and conditions while negotiations continued. Accordingly, Altice had the right to keep the channels up, but it chose not to exercise it. The facts also confirm that the termination of Starz was premeditated. There can be no dispute that, within hours of the deletion, Altice had unveiled a website to explain Cablevision's

² Declaration of Joe Glennon, Executive Vice President of Affiliate Distribution, Starz Entertainment, LLC, MB Docket No. 18-9, at ¶ 11 (filed Jan. 17, 2018) ("Glennon Declaration"). *See also* Altice Opposition at 8 (in which Altice concedes that it conditioned extending the agreement during negotiations on Starz providing the programming for free).

³ Declaration of Joe Glennon, Executive Vice President of Affiliate Distribution, Starz Entertainment, LLC, MB Docket No. 18-9, at ¶ 3 (filed Jan. 25, 2018) ("Second Glennon Declaration").

⁴ *Id.*, ¶ 8. *See also* Letter from R. Michael Senkowski, DLA Piper LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-9 (Jan. 23, 2018) ("Complaint Filing").

deletions with false and misleading statements, had pre-recorded messages regarding the deletion set up on its phone systems, and had replaced the Starz Channels with non-premium channels from different genres.⁵ Altice even admits that it “had negotiated contingency carriage agreements with these channels in case negotiations with Starz fell through.”⁶ Clearly, Altice’s deletion of the Starz Channels was not a last-minute surprise that was out of Altice’s control – Altice had made plans for the deletion well in advance of New Year’s Day – it simply did not bother to inform its subscribers or the franchise authorities of its plans as required by the Commission’s rules.

IV. ALTICE’S OPPOSITION DEMONSTRATES A CONTINUED DISREGARD OF ITS LEGAL OBLIGATIONS

In short, Altice’s Opposition rests on an utter disregard for its obligations under the Commission’s consumer protection rules.

A. Altice did not timely notify subscribers as required under the Commission’s rules

Altice claims to have “clearly satisfied the Commission’s notice requirements by notifying subscribers ‘as soon as possible’ of the changes in their programming service,”⁷ which, by Altice’s argument, was immediately prior to deleting the Starz Channels from the Cablevision systems.⁸ This self-serving interpretation of the rule is contrary to its actual text and demonstrates Altice’s misguided view of its consumer protection obligations. Altice further attempts to justify its rule violations by distinguishing its

⁵ Glennon Declaration, ¶ 10.

⁶ Altice Opposition at 10.

⁷ Altice Opposition at 12.

⁸ *Id.* at 10.

actions from those of Time Warner in *Time Warner-NFL*, claiming that it “was not in control of whether or not Starz’s carriage would be terminated,”⁹ because it was engaged in “continuing negotiations” with Starz that could have resulted in Starz’s acquiescence to Altice’s demands. However, the Commission’s rules and precedent do not support this interpretation of Altice’s obligations which would effectively render the rule a nullity.

1. Altice clearly had “control” within the meaning of the rule

Section 76.1603(b) of the Commission’s rules, plainly states:

Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator.¹⁰

A plain English reading of the rule under basic principles of interpretation provides that the second sentence of the paragraph modifies the former. Therefore, notice must be given “as soon as possible” and that, except for changes outside of the “control” of the operator, such notice must be given at least thirty days in advance of the change.

Furthermore, the Commission’s rules are clear about what “control” means, stating:

Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.¹¹

⁹ *Id.* at 13-14.

¹⁰ 47 C.F.R. §76.1603(b).

¹¹ 47 C.F.R. § 76.309(c)(4)(ii).

In adopting this definition, the Commission observed that “events [that] are generally scheduled by the cable operator” and events for which “the operator knows the schedule reasonably well in advance of the event” are within the operator’s control.¹²

In applying this definition in *Time Warner-NFL*, the Commission provided clear guidance that is directly applicable here. In that case, the Commission rejected Time Warner’s claim that its deletion of the NFL Network was not within its “control.” The Commission found that, because Time Warner declined the NFL Network’s offer to allow it to continue to carry its programming under the pre-existing terms and conditions of their agreement for the thirty days necessary to fulfill the notice requirements under section 76.1603, the decision to delete the network was under Time Warner’s control for the purposes of the rule.¹³ The Commission explained that “[a] conclusion that this change was not in Time Warner’s control is contrary to common sense and to the ordinary meaning of the word ‘control,’” and would enable a cable operator to drop programming without notice to subscribers whenever a programming contract expires.¹⁴ In short, Altice’s interpretation of “control” would gut the rule.

Here, as in *Time Warner-NFL*, the network, Starz, offered to extend its agreement with the cable operator, Altice, under the existing terms of the current agreement for a short period during which Altice could have fulfilled its notice obligations under the

¹² *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection & Customer Service*, Report & Order, 8 FCC Rcd 2892, ¶ 43 (1993).

¹³ *Time Warner Cable*, Order on Reconsideration, 21 FCC Rcd 9016, ¶ 17 (2006) (“Time Warner Recon Order”).

¹⁴ *Id.*

rules.¹⁵ Altice never mentions these offers in the Altice Opposition, much less disputes them.¹⁶ In fact, Starz made two good-faith offers to extend the current terms of the agreement.¹⁷ As in *Time Warner-NFL*, Altice rejected both offers and proceeded to delete the Starz Channels from its systems without prior notice to consumers.¹⁸ And, contrary to Altice's claims,¹⁹ there was no mutual understanding that Altice would delete the Starz Channels, if a deal was not reached by midnight on December 31st, and Starz continued to negotiate earnestly in hopes of reaching an accord.²⁰

Altice attempts to distinguish its actions from those in *Time Warner-NFL* by asserting that, unlike the parties in *Time Warner-NFL*, it was engaged in "continuing negotiations" with Starz that absolved it of its notice requirements.²¹ Altice claims that, as long as negotiations continued, it could not know for sure whether it would choose to delete the Starz Channels.²² Therefore, it concludes, the deletions were not under its control.²³

¹⁵ Glennon Declaration, ¶6.

¹⁶ In an exercise in misdirection, Altice responds that it too offered to extend -- for one or two years on the same terms. It hardly needed years to provide thirty-days' notice.

¹⁷ See *supra* pg. 4-5.

¹⁸ *Id.*

¹⁹ Altice Opposition at 8.

²⁰ Second Glennon Declaration, ¶2.

²¹ Altice Opposition at 13-14.

²² *Id.*

²³ *Id.*

As in *Time Warner-NFL*, Altice’s claim that it did not have control is contrary to common sense and the definition of the word “control.” Altice alone has the ability to remove channels from its networks. Starz did not, and has not, de-authorized Altice from receiving Starz’s satellite-delivered signals and, therefore, Altice could transmit the Starz Channels to subscribers today.²⁴ Altice’s rejection of good-faith offers to extend its “legal right” to continue carrying the Starz Channels for a short period under the then-existing rates and terms established its “control” for the purposes of the rule and its subsequent failure to compel Starz to accept its new terms in no way absolved it of its responsibility to consumers. Altice’s admitted negotiation of contracts for replacement channels in advance of the deletion, and other planning for the deletion, only confirm its control.

Here, as in *Time Warner-NFL*, an interpretation that Altice does not have “control” would completely undermine the rule and defy common sense, allowing cable operators to avoid their notice obligations to consumers merely by claiming that “negotiations” made their ultimate action unknowable until the last moment. The rule does not provide an exemption from the notice requirement simply because the parties have been negotiating.

2. There has been no change in policy regarding the definition of “control” under the rules

Altice attempts to claim that “the policy behind interpreting cable operators to have ‘control’ over carriage decisions well before carriage negotiations conclude has also changed.”²⁵ Likewise, Altice has unilaterally determined that the notice requirement is

²⁴ Glennon Declaration, ¶ 6.

²⁵ Altice Opposition at 14.

“obsolete,” an “abstract principle,” and “is today far less relevant,” such that it apparently need not comply with the rule.²⁶ However, Altice does not cite a single source for this self-serving proposition and makes no reference to any supporting Commission document or statement. Instead, Altice substitutes its own judgement for that of the Commission and argues that new technology and alternative viewing options, including OTT products such as Hulu, Amazon Prime and Apple iTunes “obviate[e] the need for 30 days’ notice of potential channel deletions.”²⁷ Altice’s argument essentially boils down to an assertion that it does not need to follow the Commission’s cable consumer protection rules, because some cable customers also have broadband. The Commission’s rules exist to protect all consumers, and are not rendered moot simply because those fortunate enough to fall on the right side of the digital divide have alternative viewing options thanks to their wealth, access, or knowledge.

First, it is not within Altice’s authority to decide when and if the Commission’s rules are obsolete and no longer require compliance. That authority lies solely with the Commission, subject to Administrative Procedure Act requirements. Altice’s argument exemplifies its disregard for Commission rules and demonstrates the need for swift and clear action to enforce those rules.

Second, Altice’s argument completely fails to recognize the underlying purpose of the rules that consumers remain informed of changes to their cable service and have sufficient time before those changes to voice their concerns about the changes to the cable operator and to discontinue service. The mere existence of alternative viewing

²⁶ *Id.* at 4, 5, and 19.

²⁷ *Id.* at 14.

options does nothing to provide consumers with opportunities “to make their voices heard” or afford sufficient time for consumers to “make arrangements to secure dropped channels through alternative means, such as by changing service providers,” which the Bureau recognized as “two important purposes” of the notice requirement.²⁸

Finally, Altice presumes, incorrectly, that consumers, without any prior notice, could immediately and seamlessly transition from its cable service to alternative viewing options with which they may or may not be familiar. In doing so, Altice ignores that not all consumers have access to the devices and platforms required to engage in such options and it makes the gross assumption that all consumers have the discretionary income to spend on these alternate arrangements. Altice also seems to presume that consumers should bear whatever costs such transition entails despite having already paid Altice for the same content. Altice’s position reflects the same casual indifference to consumer rights that are evident in its abrupt deletion of the Starz Channels without prior notice, its consumer avoidance tactics, and misleading statements.

B. There is overwhelming evidence that Altice diverted or did not answer calls from concerned consumers

Altice falsely claims that there is no proof that telephone calls asking about the Starz networks’ removal were diverted and not answered.²⁹ The proof, however, is the overwhelming flood of complaints from outraged Altice subscribers. As of the date of this response, Starz has forwarded nearly 60,000 calls and nearly 4,000 emails to Altice inquiring about Altice’s deletion of the Starz Channels.³⁰ Attached as Exhibit 2 is a small

²⁸ *Time Warner Cable*, Order, 21 FCC Rcd 8808, ¶ 7 (2006) (“Time Warner Order”).

²⁹ Altice Opposition at 14-15.

³⁰ Second Glennon Declaration, ¶ 8.

sampling of complaints demonstrating Altice's failure to meet its obligations under Section 76.309 of the rules.³¹

Altice's contention that its failure to provide the requisite level of consumer care under Section 76.309 is somehow the fault of Starz borders on the absurd. Nearly 60,000 consumers have thus far voiced their concern regarding Altice's unlawful deletion of the Starz Channels and did so as a direct result of Altice's actions. Each customer made the unilateral decision to act and Altice's attempt to discredit their efforts by ascribing such action to Starz is another example of Altice's failure to value its consumer base. Further, Starz has no control over, or responsibility for, Altice's customer support services. To the extent Altice underestimated the back-lash and was inadequately staffed to handle the volume of complaints, it has since had sufficient time to dedicate the necessary resources to ensure its consumers can be heard on this issue. Altice's failure to do so is in blatant disregard of its legal obligations.

C. Starz has clear standing to assert its claims

As in other parts of its Opposition, Altice demonstrates a profound misunderstanding of Commission rules and precedent in its contention that Starz lacks standing in the instant case. Altice claims that Starz cannot succeed on the merits of its petition because it is not an "interested party" under section 76.7(a)(1) of the Commission's rules, and that the Commission should not enforce the rules at issue in this proceeding. Specifically, Altice contends that the customer service standards at issue "were not enacted for Starz's benefit, but rather for the benefit of consumers," and that because the customer service rules do not contain specific procedures for settling

³¹ See Exhibit 2. On January 23, 2018, Starz submitted to the record copies of complaints and other communications from Altice customers. See Complaint Filing.

disputes, they should not be used as a vehicle to enforce private actions. On this basis alone, Altice argues, the petition should be dismissed.

Altice's argument is flawed in several ways. First, section 76.7(a)(1) of the Commission's rules does not define "interested party," much less define it in a manner that would suggest that Starz lacks standing to file the instant petition. Instead, it simply lists an interested party as one type of entity that may file a petition and on whose behalf the Commission may waive requirements codified in Part 76 of its rules. However, the very purpose of the notice rules establishes Starz's standing – it is to provide Altice customers with time to secure the Starz programming from alternative suppliers. These are not simply customers of Altice; they are viewers of the Starz programming. Second, even if Starz were not an "interested party" with respect to the customer service rules, it unquestionably has standing to file this petition because of the harm flowing to itself and its customers.³² Altice fails to explain why Starz would not be considered an "interested party" with respect to the welfare of its customers.

Third, Altice erroneously applies Commission precedent to support its argument that because the Commission's customer service rules lack specific dispute procedures, "they are not meant to be enforced by private actions." Altice incorrectly claims that "there has been substantial debate over whether the Commission is meant to enforce [the customer service] rules at all, or whether they were meant to be reserved for local franchising authorities." Although the Commission delegated primary enforcement of

³² The Supreme Court has held that businesses may advocate on behalf of clients and customers against actions that interfere with that business relationship: "[V]endors and those in like positions have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function." *Craig v. Boren*, 429 U.S. 190, 195 (1976).

the standards to local franchising authorities, it nevertheless “retain[ed] authority to address, as necessary, systemic abuses that undermine the statutory objectives.”³³ Thus, the Commission has clear authority to address Altice’s failure across many systems in multiple states to comply with these minimum standards for customer service and address behavior that undermines the purpose of the rules. Moreover, even accepting Altice’s argument that violations of section 76.1603(c) are intended to be addressed by local franchising authorities, by failing to comply with Section 76.1603(c)’s requirement that that it provide thirty days’ written notice to the franchising authorities of the service change, Altice has frustrated the ability of any such authority to carry out its enforcement responsibilities. The Commission spoke to this very point with respect to Section 76.103(c) in a directly analogous situation in *Time Warner-NFL*.³⁴

V. STARZ HAS DEMONSTRATED CLEAR AND IRREPERABLE HARM TO BOTH CONSUMERS AND ITSELF FLOWING FROM ALTICE’S VIOLATIONS OF BOTH SECTION 76.1603 AND 76.309

Starz has demonstrated clear and irreparable harm both to consumers and itself flowing from Altice’s violations of the Commission’s rules, and those harms are interrelated. With respect to Section 76.1603, had Altice provided the thirty-day prior notice required under the rule, Altice subscribers would have had such time to make alternative viewing arrangements for Starz content. Accordingly, Starz viewers would have had a better opportunity to access the Starz content, for which they already had paid, from alternative sources, and Starz would have had the viewership on which it depends for its business.

³³ Time Warner Recon Order, ¶ 31.

³⁴ *Id.*, ¶ 30.

Contrary to Altice's assertions, the Commission made this clear in *Time Warner-NFL*, that required carriage for thirty days is an appropriate remedy to enable a cable operator to provide requisite prior notice. The Commission, therefore, directed Time Warner to continue providing NFL Network programming during the thirty-day notice period.³⁵

Altice's conduct after deleting the Starz Channels has added to the irreparable harm caused by its failure to comply with the notice rule. During the intervening period between Altice's unlawful deletion of the Starz Channels and the filing of Starz's Emergency Petition for Injunctive Relief, Altice's tactics of avoidance and misinformation compounded customer confusion and further delayed consumer efforts to find alternative viewing options. For example, Altice does not deny that it told callers that STARZ "will be back on in a few days" and that the channel would be off the air for "at most" 15 days.³⁶ Due to Altice's actions and the increasing customer confusion that resulted, the need for emergency Commission action has become evident.

Altice's disagreement notwithstanding, the Commission clearly has determined that "irreparable harm" can be caused to a cable network when its channels are deleted without required notice at an important time for its business, such as a period when subscriber viewing patterns for a season are being established.³⁷ On this issue, there is no meaningful distinction between the *Time Warner-NFL* case and the one before the Commission today. That Starz premieres original programming in various months of the

³⁵ See Time Warner Order, ¶ 10.

³⁶ Glennon Declaration, ¶ 12

³⁷ See Time Warner Recon Order, ¶ 23; Time Warner Order, ¶ 8.

year does not diminish the importance of programming premiered in January. Further, although Altice may not understand the importance of Starz's January premier in establishing viewership throughout the year, Starz invested well over \$1 million dollars in marketing and advertising alone to promote its new original series *Counterpart* in the New York metropolitan area (in addition to tens of millions of dollars to produce the show itself).³⁸ Starz's business is built on the back of "tent pole" programming like *Counterpart*, through which Starz builds long-term subscriber relationships and attracts new viewers to its channels and other shows, and New York is a key market for Starz.³⁹

Altice also tries to distinguish this case from Time Warner-NFL by focusing on the fact that Starz original programming is prerecorded as opposed to live. The simple fact that Starz's original programming is also available on an on-demand basis does not mean its broadcast is not time-sensitive. A large percentage of Starz viewers view programming live, and live ratings are still an important metric of Starz's performance.⁴⁰ Altice's seeming unfamiliarity with Starz's business is not determinative of the harm to Starz and consumers.

Altice's response that Starz had "the means and incentive to mitigate or even eliminate the harms it claims it is directly suffering, and failed to do so" is tautological and essentially amounts to an argument that it is Starz's fault that Altice harmed it and Starz viewers because Altice would not have violated the rules if Starz had acquiesced to its demands. Starz's unwillingness to bind itself to unfavorable contract terms in no way

³⁸ Second Glennon Declaration, ¶ 6.

³⁹ *Id.*

⁴⁰ *Id.*, ¶ 7.

makes it responsible for Altice's failure to meet its obligations under the Commission's rules. This is particularly true given Starz's multiple offers to extend its agreement under the existing terms that would have enabled Altice to provide the required notice.

Finally, Altice's repeated insistence that viewers have alternative content-viewing options,⁴¹ is completely irrelevant to Altice's failure to comply with the Commission's rules. As outlined in detail above, this line of reasoning fails to: 1) acknowledge the underlying purpose of the rule to ensure that consumers remain informed of changes to their cable service and have sufficient time before the changes either to voice their concerns to the cable operator or to discontinue service; 2) presumes that viewers could immediately and seamlessly transition, without prior notice, from cable service to alternative viewing options with which they may or may not be familiar, to which they may or may not have access, and for which they may or may not have the means to pay; and 3) presumes that consumers should bear whatever costs such transition entails despite having already paid Altice for that very same content.⁴²

VI. ANY PURPORTED HARM TO ALTICE IS IMMATERIAL AND THE RESULT OF ITS OWN ACTIONS

Altice misconstrues Starz's position with respect to the degree of harm to other parties should the Commission grant injunctive relief. Contrary to Altice's statement,⁴³ the test for injunctive relief does not require that there be no harm to other parties.

⁴¹ Altice Opposition at 19.

⁴² *See supra* pg. 12.

⁴³ Altice Opposition at 19 ("Contrary to Starz's position that no parties would be harmed by grant of its requested relief, restoring Starz carriage would harm Altice, its subscribers, and the programming services that have been newly added to the Altice channel line-ups.").

Rather, the harm to other parties is weighed against the other three factors (i.e., the likelihood of success on the merits, threat of irreparable harm in the absence of relief, and public interest), with the public interest factor being weighed most heavily.⁴⁴ As Starz shows in the Emergency Petition, any potential harm to Altice would not be substantial, particularly when considered against the overwhelming weight of the public interests served by enforcing and upholding the Commission's rules and the irreparable harms caused by Altice's violations. Furthermore, the supposed hardships that Altice raises are the clear and direct results of Altice's violations. None of the potential customer "confusion" or "harm" that Altice cites as reasons to deny relief would be an issue had Altice not created far greater confusion and harm through its violations. Altice does not have "clean hands" and, therefore, cannot rely on this hollow defense to preserve the fruits of its wrongdoing by now claiming that undoing the wrong is too disruptive.

As a threshold matter, Altice can hardly complain that cost or inconveniences incurred in order to come into compliance with the Commission's rules should be deemed a "harm" within the meaning of the test for emergency relief. In fact, no cable company would ever have to comply with the rules if compliance costs are elevated to cognizable harms under the test for injunctive relief.

In any event, Altice would have the Commission believe that the harm caused by its disputed and unsupported claim that granting the requested injunctive relief would disrupt viewership of a handful of non-premium channels, with limited national distribution, and no recent box office hits,⁴⁵ most of which have been carried for fewer

⁴⁴ See e.g., Time Warner Recon Order, ¶ 9.

⁴⁵ Glennon Declaration, ¶ 14.

than three weeks should be weighed favorably against the harm caused by deleting sixteen popular premium channels that were carried by the Altice systems for decades. Altice would also have the Commission believe that the harm of disrupting viewership of these recently-added, low-value channels should be weighed favorably against the public interests in protecting and upholding the Commission's rules. On balance, the harms Altice describes hardly begin to tip the scales.

Furthermore, Altice claims injury because "Altice will be forced to pay for programming that its customers are watching less."⁴⁶ Altice neither quantifies the Starz viewership nor provides any support for its assertion.

Altice also argues that the requested relief "would effectively force Altice to restore the Starz networks to its customers' channel line-ups and remove the newly added networks, because the systems do not have the available capacity to carry both the Starz and newly added networks."⁴⁷ Again, Altice offers no explanation of, or support for, its claim, which does not withstand the slightest of scrutiny. As an example, Altice carried the STARZ and STARZ/ENCORE channels on its Norwalk, Connecticut system on channel Nos. 100, 340-347 and 350-358.⁴⁸ Altice has not moved any channels to those channel positions.⁴⁹ The "replacement" channels are carried on channel Nos. 157, 189,

⁴⁶ Altice Opposition at 20. Altice also refers to the 16 STARZ ENCORE channels as "an underperforming network" that has "limited and declining viewership on Altice systems." Altice Opposition at 7, 8.

⁴⁷ Altice Opposition at 6.

⁴⁸ Second Glennon Declaration, ¶ 4.

⁴⁹ *Id.*

395, 396 and 397.⁵⁰ Also, Altice provides no evidence as to why it cannot continue to carry the “replacement” channels without interruption while it restores carriage of the Starz Channels for thirty days.

With respect to harm to Altice, any harm would be minimal. As Starz provided in the Emergency Petition, Starz would have to escrow fees received for the thirty-day period during which Altice provides its required notice, which would be returned to Altice if the Commission or a court of relevant jurisdiction determine that Altice had not violated the rules.⁵¹ If the Commission or a court ultimately determines that Altice violated the Commission’s rules, which seems clear on the determinative, undisputed facts, Altice is barred by the principle of unclean hands from claiming that it should be compensated for the expense of righting that violation.

Finally, Altice’s First Amendment “compelled speech” claim is also unpersuasive and was rejected in a directly analogous context in *Time Warner-NFL*.⁵² As in *Time Warner-NFL*, Altice (and its predecessors) had no objection in principle to carrying the Starz Channels for over two decades and indicates at multiple points in its Opposition that it was willing to carry the Starz Channels under the commercial terms that sought to impose upon Starz.⁵³ A claim that, today, after an unsuccessful negotiation and dispute over commercial terms, a legitimate First Amendment objection has emerged is disingenuous.

⁵⁰ *Id.*, ¶ 5. See also Exhibit 1.

⁵¹ See Starz Emergency Petition at 19-20.

⁵² See Time Warner Cable Recon Order, ¶ 25.

⁵³ See generally Altice Opposition at 7-8.

VII. STARZ HAS CLEARLY SHOWN THAT THE PUBLIC INTEREST FAVORS GRANTING THE REQUESTED RELIEF

Altice asserts that Starz has not demonstrated that the public interest will be served by Commission action. Instead, Altice takes cover under the guise of its “best business judgment” and encourages the Commission not to interfere in private contracts.⁵⁴ Commission action here involves no such interference and, after compliance with the Commission’s rules, Altice can exercise its best independent business judgement with respect to the Starz Channels.

Notably, in advancing arguments that are clearly in Altice’s own self-interest, rather than the public interest, Altice does not dispute the fact that it failed to provide notice to its subscribers that the Starz channels would be removed from Cablevision systems effective January 1, 2018. Putting aside the fact that Altice apparently believes that restricting its subscribers’ access to content for which they already have paid is in the public interest, the Commission previously recognized, in a situation directly analogous to the present one, that the public interest determination requires a balancing of the harm to consumers of the alleged rule violation with the harm to the public of the interim relief sought.⁵⁵

Specifically, the Commission noted that “[t]he rule requiring cable operators to provide subscribers with thirty-days notice before dropping a channel serves at least two important purposes. First, it provides customers with the opportunity to make their voices heard before any programming changes are made. Second, it allows customers to make arrangements to secure dropped channels through alternative means, such as by

⁵⁴ Altice Opposition at 21-22.

⁵⁵ Time Warner Order, ¶ 7.

changing service providers.”⁵⁶ Thus, each day that Altice subscribers are deprived of Starz channels “significantly and irreparably harms many of them.”⁵⁷ In contrast, the interim relief sought—reinstating carriage of the Starz channels on Cablevision systems—causes no significant harm to the public. The balancing test outlined by the Commission therefore tips heavily in favor of injunctive relief.

VIII. THE FCC MUST ENFORCE ITS CONSUMER PROTECTION RULES BY ENJOINING ALTICE’S ACTIONS

Further demonstrating its disdain for the Commission’s consumer protection rules, Altice blithely refers the thirty-day notice requirement as nothing more than an “abstract principle.”⁵⁸ Contrary to Altice’s misguided view, the thirty-day notice requirement is a binding Commission rule not subject to evasion or interpretation by cable operators. Altice’s cavalier view of the Commission’s consumer protection rules compels the Commission to enjoin Altice’s actions as soon as possible. The only way for the Commission to enforce its consumer protection rules in this case is to require that Altice restore the programming and provide the requisite customer notice. Without prompt and decisive action, the Commission would signal to Altice and other cable operators that they are free to violate the rules in the future at their convenience.

The thousands of customer complaints filed with the Commission in recent days are additional evidence of the need for the Commission to enforce the advance notice requirement. These customers had no prior notice or knowledge of Altice’s decision to remove the programming and were understandably confused and outraged when it

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Altice Opposition at 5.

suddenly was no longer available to them. Had they received the required notice, these consumers would have known that the programming would be unavailable after a certain date. The confusion and anger resulting from Altice's actions are precisely the reasons why the Commission adopted the notice rules and compel Commission enforcement of them.

IX. CONCLUSION

The plain and undisputed facts of this matter, coupled with the clear requirements of the Commission's rules, and the uncontroverted continuing harms, strongly support immediate Commission action and injunctive relief.

Respectfully submitted,

Starz Entertainment, LLC

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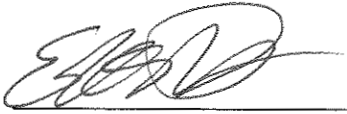
Counsel to Starz

January 25, 2018

CERTIFICATE OF SERVICE

I, Edward H. Smith II, hereby certify that on this 25th day of January, 2018, copies of the foregoing Reply to Altice USA, Inc.'s Opposition to Emergency Petition for Injunctive Relief and supporting Declaration of Joe Glennon were served by first-class U.S. mail, postage prepaid, upon:

David Connolly, Esquire
Executive Vice President, General Counsel
Altice USA, Inc.
1 Court Square, 45th Floor
Long Island City, New York 11120

A handwritten signature in black ink, appearing to read 'E. H. Smith II', is written over a horizontal line.

Edward H. Smith II

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Altice USA, Inc.)	MB Docket No. 18-9
Cablevision Systems Corporation, and)	
CSC Holdings, LLC)	
)	
Emergency Petition for Injunctive)	
Relief)	

SECOND DECLARATION OF JOE GLENNON

Joe Glennon states, upon knowledge and information, that:

1. I am the Executive Vice President, Affiliate Distribution, of Starz Entertainment, LLC (“Starz”) and submit this declaration in support of Starz’s Reply to Altice USA, Inc.’s (“Altice”) Opposition to Starz’s Emergency Petition for Injunctive Relief.
2. There was no mutual understanding that Altice would delete the 16 STARZ, STARZENCORE, and MOVIEPLEX channels (the “Starz Channels”), if a deal was not reached by midnight on December 31st, and Starz continued to negotiate earnestly in hopes of reaching an accord.
3. Starz did not, and has not, de-authorized Altice’s receipt of Starz’s satellite-delivered signals.
4. Prior to deleting the Starz Channels, Altice carried the STARZ and STARZENCORE channels on its Norwalk, Connecticut system on channel Nos. 100, 340-347 and 350-358. Since the deletions, Altice has not moved any channels to those channel positions, as shown in Exhibit 3, which contains photos of the Altice channel guide as of January 24, 2018 and showing channel numbers skipping the former STARZ and STARZENCORE Channels.

5. In the New York area, Altice replaced the STARZ and STARZENCORE channels on channels 157, 189, 395, 396, and 397 with the Cowboy Channel, the Hallmark Drama Channel, MGM HD, the Sony Movie Channel, and Flix, respectively. *See* screenshots of the replacement channels in the channel guide attached as Exhibit 1.

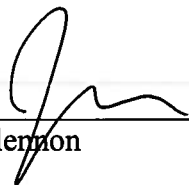
6. Starz invested well over \$1 million dollars in marketing and advertising alone to promote its new original series *Counterpart* in the New York metropolitan area (in addition to tens of millions of dollars to produce the show itself). Starz's business is built on the back of "tent pole" programming like *Counterpart*, through which Starz builds long-term subscriber relationships and attracts new viewers to its channels and other shows, and New York is a key market for Starz.

7. A large percentage of Starz viewers view its programming live, and live ratings of our episodes' premiers are an important metric for Starz's performance.

8. To date, Starz has forwarded nearly 60,000 calls, and nearly 4,000 emails that it has received regarding the carriage of STARZ, STARZENCORE, and MOVIEPLEX to Cablevision.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

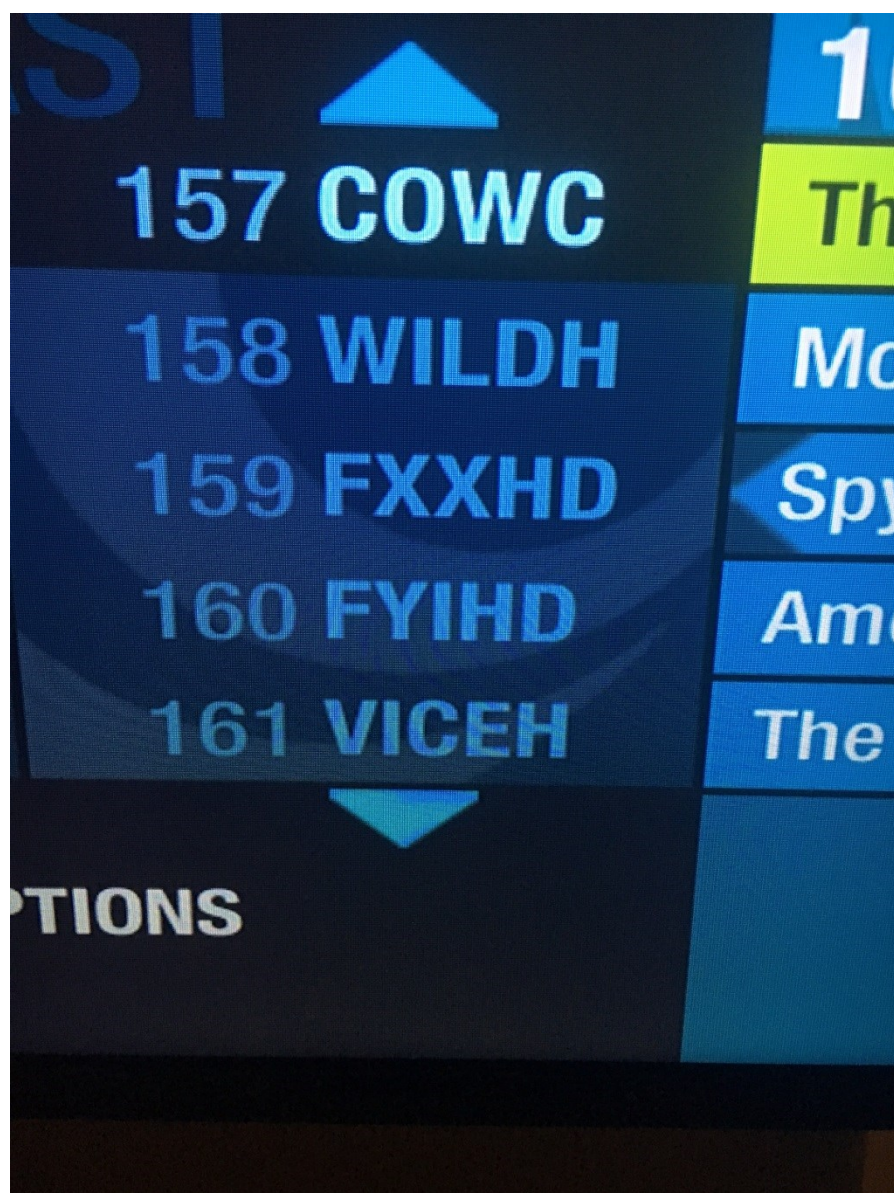
Dated January 25, 2018

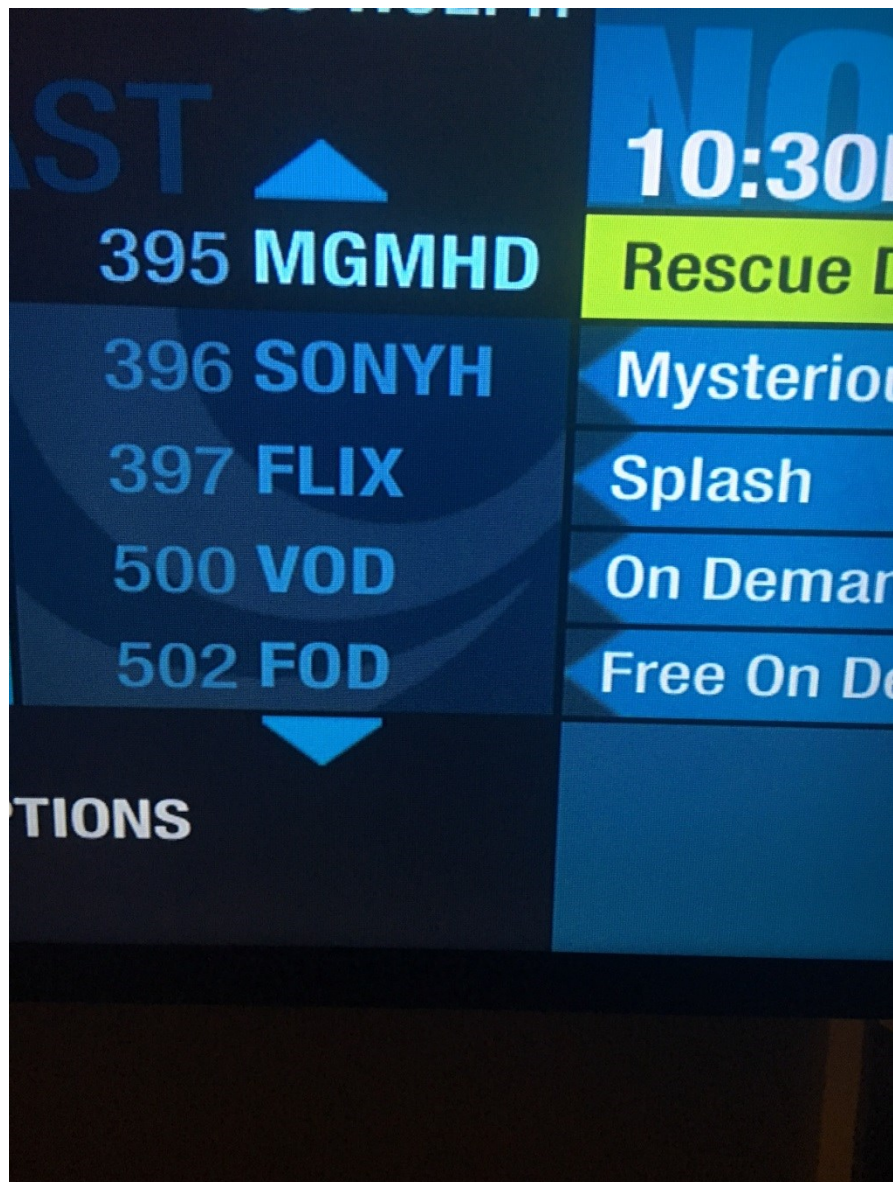


Joe Glennon

EXHIBIT 1

Altice Replacement Channel Lineup





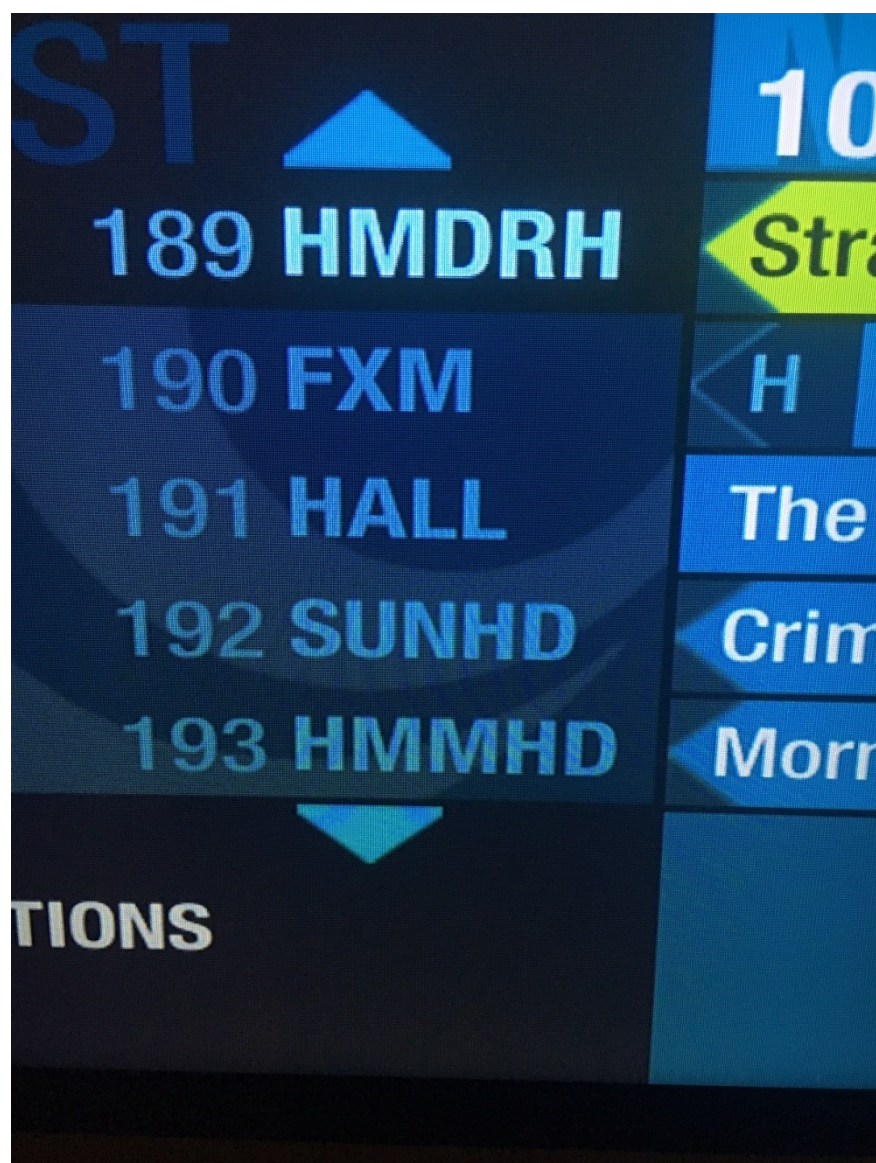


EXHIBIT 2

Sampling of Consumer Complaints Regarding Customer Service Violations

ID No. 34989: I have been a customer of Optimum for many years. *Recently, I have called on three different occasions. I have not been able to get through to anyone. I even left a phone number on their message, they were to return the calls because of volume and weather conditions . Customer service is really lacking!!*

ID No. 34724: I can't believe you take 16 channels away, give some bogus channels, like the cowboy channel and then have the gall to raise my monthly service charge \$16! *I've called twice to adjust my subscription and both times I got cut off and then did the call back thing and no one has called yet. Third try is today.*

ID No. 15970: Switched over in November to a gold package and Starz was part of package. I was never notified of Starz being removed from Optimum. Very disappointed. PLEASE get Starz back . I hope in the meantime there will be an adjustment on my bill. *Tried calling numerous times and was never able to get connected to a representative. I will continue to call and e-mail until I am able to talk to someone!*

ID No. 16806: Very upset that you dropped Starz. If you don't get the back I will be cancelling my optimum account and going to Verizon. *Didn't even have the respect to let us know and when we call you disconnect us. Very poor customer service as well.*

ID No. 2333: I am very unhappy that you canceled STARZ and Encore. *I called yesterday and was assured this was a scare tactic by STARZ. Apparently I was lied to by your representative.* I was told that I would be getting 4 USELESS channels in place. Either you get STARZ and Encore back, give me a refund on the 2 channels you took from me, or I find a new provider. You are no longer the only cable company in town. You have no right to drop something I pay for and think I am going to be paying you the same amount of money every month. You ALREADY exorbitantly overcharge. Your company disgusts me. Make it right.

ID No. 3597: Very disappointed in decision to drop stars other programming does not make up for lose of western channel and other programs such as outlanders. *Also not happy when I called to complain did not get option to speak with someone.* will now consider other options. I am one of your initial customers in this area. Don't like that I wasn't told about this until it actually occurred and there was no price adjustment

ID No. 12672: I want to change my service due to the dropping of starz. Please do not ignore me. *Been a customer for a long time tried calling and no one picks up.*

ID No. 15109: I am dissatisfied with the selection of shows Optimum is providing. Even though it seems as if there are a tremendous amount of shows available to the customer, many of them are just repetitions of the same shows. Now the Encore and Starz have also been dropped. Is Optimum going to reimburse us for the loss of service we contracted for? I have been a loyal customer for many years but now it may be time to part ways. I am seriously looking for alternative venues to provide my TV, phone and internet services. *Is anyone even going to read this as I have tried to call and been hung up on each time.*

ID No. 16121: *I'm very displeased with the discontinuing of Starz and the runaround I get when I call customer service.* After raising prices you take away service. Doesn't sound like the best way to do business. Do the right thing BRING BACK STARZ!!!!

ID No. 21302: I am disgusted with Optimum. You dropped Starz and replaced substandard programming. I am not in the least bit interested in the new replacement shows. *I tried calling but no one bothered to call us back.* I don't know you does your analysis and decided to make this change but this group missed the boat. I pay a lot of money and you have now forced me to find service elsewhere.

ID No. 22291: will not pay for channels i am not receiving. Want a monthly credit on my bill. I've been a loyal customer since 92; Want this matter addressed right away. *Have been calling and not able to get through on 1/3/18.*

ID No. 22502: *I have called to discuss my bill now that Starz and Encore have been removed and could not get any answers!!* Will my bill be lowered since my service has been depleted???

ID No. 26497: I have been a loyal customer for over 15 yrs and I challenge anyone to check and see if I've EVER missed a bill payment *and now optimum won't pick up or return my calls because they don't have the guts to hear my problems on the matter*, REMEMBER YOU AREN'T THE ONLY CABLE PROVIDER IN THIS TOWN !

ID No. 27672: *We have emailed you and called you and still no response!* You need to restore our Starz service, which we are paying for, or we will discontinue service with you

ID No. 33820: *Calling, messaging, posting and getting nowhere. Optimum employees are reading a script & blaming Starz when Optimum is the one not negotiating in good faith.* Make it an option, charge 8.99 more just get Starz back on our TVs. Don't want streaming or to buy extra equipment & not have Starz on my remote with a guide & description. Want to browse listings & options & choose a movie like always. Option of get a laptop, have 4, and use HDMI cable to stream. Please! I just want to browse the 17 missing channels. BRING BACK STARZ!!!!!!!!!!

EXHIBIT 3

Altice Removal of Starz Channel Slots

